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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ASL

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRANCISCO H. BANUELOS,
CDCR #J-95995,

Plaintiff,

vs.

UNITED STATES DEP'T OF
HOMELAND SECURITY,

Defendant.

Civil No. 13cv2428 BEN (RBB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEES REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

Francisco H. Banuelos ("Plaintiff"), an inmate currently incarcerated at the Metropolitan Correctional Center located in San Diego, California, and proceeding pro se, has initiated this action by filing a complaint (ECF Doc. No. 1).

I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a party's failure to

¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a), (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, eff. May 1, 2013. However, the additional \$50 administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP")
 2 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
 3 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

4 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 5 commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28
 6 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a);
 7 *Andrews*, 493 F.3d at 1051.

8 **II. CONCLUSION AND ORDER**

9 For the reasons set forth above, the Court hereby:

10 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
 11 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to
 12 28 U.S.C. § 1914(a) and § 1915(a); and

13 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is
 14 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; *or*
 15 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust
 16 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
 17 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
 19 with this Court's approved form "Motion and Declaration in Support of Motion to
 20 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee
 21 or complete and submit the enclosed Motion to Proceed IFP within that time, this action
 22 shall remain dismissed without prejudice and without further Order of the Court.

23
 24 DATED: 10/15/13

25 
 26 HON. ROGER T. BENITEZ
 27 United States District Judge
 28